

TESTIMONY OF  
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REGARDING THE  
MOTOR VEHICLES OWNERS RIGHT TO REPAIR ACT  
BEFORE THE HOUSE COMMERCE, TRADE  
AND CONSUMER PROTECTION SUBCOMMITTEE

November 10, 2005

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify in support of the Motor Vehicle Owners Right to Repair Act of 2005 (HR 2048). My name is Aaron Lowe and I am vice president of government affairs for the Automotive Aftermarket Industry Association. AAIA is a national trade association with 8,243 member companies and affiliates representing more than 54,000 vehicle repair shops and parts stores.

In the late nineties, the House Energy and Commerce Committee approved amendments to Clean Air Act legislation that would require car companies to share all emissions related service information and tools with the aftermarket that they provide their franchised dealerships. The amendment became necessary due to provisions in the Act that would require 1994 and later vehicles be equipped with emission control computers that monitored and controlled nearly every emissions related function. This Committee was concerned that unless steps were taken to ensure competition, car companies would make access to these OBD systems proprietary, thus increasing the cost to car owners of maintaining their emissions systems. Similar service information availability rules were enacted in the State of California in 2000.

Since passage of the Clean Air Act in 1990, these computers have expanded beyond emissions to now control virtually every vehicle system on a vehicle including brakes, air bags, suspension and entertainment. Therefore, while the

Clean Air Act service information rules have helped ensure that our industry can obtain tools and information for emissions related systems, there is no such requirement for non-emissions related systems. It is for this reason that the Motor Vehicle Owners Right to Repair Act was first introduced in 2001—to ensure that the actions undertaken to preserve competition for car owners on emissions related repairs, also carry forward for non-emissions related systems.

Right to Repair legislation introduced this year by Rep. Joe Barton has been revised in two very important areas. One, the legislation clarifies that the aftermarket only needs access to the same information that is available to the new car dealers, no more and no less. During hearings held last year by this Subcommittee, car companies charged that the aftermarket parts companies were after their blue prints in order to make the job of designing and producing replacement parts less costly. This is not and never was the case with this bill. Aftermarket parts manufacturers will continue their long standing tradition of building components that are, as good, or better than the car company parts that they replace. However in order to further allay manufacturer fears, the bill now further specifies that car companies only need to ensure access to the same tools and information available to the new car dealer, making the Right to Repair legislation consistent with the Clean Air Act requirements regarding proprietary information.

Second, the bill is not intended to create a new system for service information availability. We do not believe that a new infrastructure for non-emissions related information or tools is in the best interest of either the car companies or the aftermarket. There already is a system in place to make information and tools available to our industry due to both EPA and California regulations for service information availability. Under these rules, each car company is required to maintain a web site that contains all of their emissions related service information. The bill would simply extend these requirements to non-emissions related information and provide enforcement authority to the Federal Trade Commission (FTC) should a manufacturer not comply with the bill's requirements.

In fact, the bill now is consistent with a letter that the car companies and the Automotive Service Association sent to the Senate Commerce Committee in 2002. In that letter, the manufacturers promised to make emissions and non-emissions related information available to our industry. The one difference between the letter and the legislation is that the promises made by the manufacturers would now be enforceable. This difference is critical due to the fact that the aftermarket and car company service and parts networks are locked in a major competitive battle for the dollar of the car owner.

Dealership profits are no longer driven by new car sales alone, but also parts and service revenue. According to the National Automobile Dealers Association

(NADA), even though dealership parts and service department sales comprise just 11.8 percent of typical dealer's total sales, it contributes 48 percent of the total operating profit. New car sales make up 60 percent of total sales, but only contribute 35 percent of total profit. Absent legislation or an enforceable agreement, AAIA is concerned that car companies will set their promises aside in their drive to maximize profits from their parts and service operations.

While our industry does not have a problem competing on a level playing field for service and repair work, the use of electronics and computers on late models by the car companies threatens to shift the playing field and reduce competition in the aftermarket. Small service facilities and their customers will suffer as a direct result.

Notwithstanding the above, AAIA and its coalition partners recognize that regulatory intrusion in the market is not always the best answer and therefore we agreed to meet with the car companies last July to determine if a non-regulatory solution could be developed. These negotiations were facilitated by the Better Business Bureau and monitored by the Federal Trade Commission.

Unfortunately, while there was significant progress and much positive discussions during the two month long negotiations, these sessions ended without an agreement that would satisfy both the car companies and the independent aftermarket. Among the positive signs that emerged from these

meetings was the willingness of the car companies to discuss a system whereby their commitment could be enforced and thereby better ensuring that they will continue to make information, tools and tool capabilities available to us long after this legislative battle has faded from memory.

Further, over the past year, the aftermarket has expressed strong concerns that the National Automotive Service Task Force (NASTF), which was established by the car companies to address service information issues, was an ineffective organization in resolving information and tool issues. Our main concern was that absent an enforcement element, whether government or third party, the organization could not effectively address a car company's reluctance to provide service information or tools. Further, the absence of any structure or staff for the organization meant that it could not quickly and effectively resolve issues raised by independent shops as evidenced by the extensive time currently necessary for NASTF to resolve complaints. These problems led most technicians to forgo the NASTF process and to take matters into their own hands, using back door methods to obtain the tools and information they need to serve their customers. During the negotiations, the car companies appeared willing to discuss the establishment of an effective organization which, combined with third party enforcement, could help quickly resolve information issues for independents.

However for the third party agreement and the enhanced NASTF to work, AAIA believes that there must be a fair and balanced management of the organization

and each manufacturer must be willing to enter into a clear and comprehensive agreement as to what information and tools they are going to make available to independents. Only under these circumstances would we be able to develop a service information and tool availability system that would work in practice and obtain the needed credibility with the industry to ensure it would be used.

Unfortunately, while the broad outlines of an agreement appeared within reach, critical governance issues and an unwillingness by the manufacturers to commit to full availability of service information, tools and tool information led to the break down of the negotiations.

A key issue of concern to our industry was the need for a commitment by the manufacturers to make both their tools and the tool capabilities available to the aftermarket. Advances in technology demand that independent service entities have access to the same diagnostic and repair capabilities that are available to the new car dealerships. The car companies would not commit to ensuring that those tools possessed the same capabilities as those provided to the dealer franchises. As the Subcommittee heard at its hearing on this subject last year, in many cases, the tools purchased by independents from the car company have missing capabilities that often prevent a technician from completing a repair.

Similarly, we wanted car companies to make available information needed by tool companies to include the same diagnostic and repair capabilities that are available on dealer tools. During negotiation on this area, we made it clear that

we were not going to hold the car companies responsible for whether or how the tool companies used the capabilities in this instance, but that they would need to commit to making tool information available under reasonable licensing and security conditions. It was agreed during the discussion that this was a very complicated issue and that the parties representing the tool industry were not at the table. Therefore we were willing to leave the details of exactly what would be required to be made available, how it would be made available, and how it would be enforced to future negotiations. However, we felt that it was critical that, at minimum, the car companies agreed to fully release tool information and that a time frame be developed for the details to be worked out. The car companies could not agree to those terms. In fact the car companies could not agree to any enforcement mechanism for providing the tool information or making it available at a reasonable cost.

In addition, the companies would only commit to providing scan tool information and tire pressure monitoring. This reluctance to move beyond scan tools could be critical since diagnostic and repair capabilities may in the future be provided through avenues beyond the current scan tools and therefore we did not want to limit the future viability of this agreement by only focusing on current technology.

Further, one of the most critical problems facing independents on a day-to-day basis is attempting to repair vehicles equipped with immobilizer systems. These systems help reduce theft by preventing a car from being started unless a chip



on the key makes a handshake with a chip in the vehicle engine systems. While some car companies are making this information available, the negotiators for the car companies could not agree to make mobilizer information available because some manufacturers are refusing to make it available to independents. It is imperative that this problem be solved or a system designed to lock out thieves will lock out repair shops as well. Due to the fact that many manufactures have successfully been able to provide access for independents without jeopardizing vehicle security and the fact that all of the car companies make this capability available to their dealer, AAIA can only conclude that, given a commitment from the car companies, that they could develop a secure system whereby an independent can reinitialize a theft system without being forced to tow the vehicle to a dealership.

Another issue that caused considerable concerns was that the car companies could not agree on the scope of the service information that would be required to be provided under the agreement. The manufacturers were only willing to make manuals and technical service bulletins available to our industry. In fact, much information regarding repairs is made available through their private dealer hotlines. While we are not demanding access to the actual hotlines, it is important that critical service information that is developed to fix cars, and which is provided to all dealers through their hotlines, needs to be readily available to independent technicians as well.

Finally, the car companies were unwilling to establish the governance of the new organization as part of the agreement. The aftermarket had put forward a proposal that would provide for the equal representation on the original board for the new NASTF with four members being appointed by the car companies and four by the aftermarket. Since the governance of this organization was crucial to whether it succeeded in ensuring that information and tools are made available, we felt it was critical for the viability of both the organization and the agreement, that the governance issue be settled in advance. The car companies wanted to have this issue resolved later after the agreement was signed. We simply felt this would put our industry in a handicapped position regarding the quick and effective organization of NASTF and could derail the agreement before the first problem was solved.

The halt of the negotiation was a tough decision and one we did not take lightly. It is important to remember that the deadline for a settlement was extended three times because we felt that it was important that we do everything possible to reach an agreement. However, following weeks of tough negotiations, we are convinced that Right to Repair legislation is necessary to ensure that the independent aftermarket can obtain access to the same information and tools that are available to the new car dealers.

In conclusion, you likely will hear from the manufacturers today that they are fully committed to making service information available to our industry and that, in

fact, it is in their best interest to do so in order to promote customer satisfaction. While we agree with that statement, it is important to remember that in Canada, which has a very similar aftermarket to the U.S., independent service facilities are denied access to many of the same service information web sites that are available to U.S. technicians. Further, when our sister organization in Canada attempted to organize a voluntary system north of the border, that request was denied by the associations representing the Canadian auto manufacturers. Of course, at this point there are no service information laws or legislation in Canada, a fact that the aftermarket is attempting to rectify.

We can only speculate as the competitive position that our industry would be in had this Committee not had the foresight to take action to ensure competition with the inclusion of service information availability provisions in the Clean Air Act. The small businesses that comprise the independent aftermarket now ask the committee to take one additional step to ensure competition for all vehicle service with the passage of the Motor Vehicle Owners Right to Repair Act.

Thank you for the opportunity to testify on this important issue. I am available to answer any questions from the Subcommittee regarding the legislation or the negotiations.